

Peter Manuel

The Saga of a Song: Authorship and Ownership in the Case of "Guantanamera"

This article constitutes a case study in the interaction between a localized form of music-making that emerged from oral tradition on the periphery of the Euro-American commercial mainstream and the dramatically expanded and globalized commercial music industry of the latter twentieth century. Some such encounters, of course, have resulted in the effective extinction of local traditions. In other cases, however, local genres, songs, or practices have evolved or been absorbed into modern commercial popular ones, in ways that may be at once organic and beset with tensions. Such tensions may be particularly overt when songs circulate "schizophonically" on the global music market and generate massive profits for parties other than their creators. This essay looks at a particular instance of such an encounter, involving the evidently step-by-step and collective evolution of what became a renowned commercial popular song, "Guantanamera," and the subsequent and ongoing disputes regarding the song's ownership. The popularity of the song and the detail with which its evolution can be hypothetically reconstructed make it a somewhat unique case, of interest in itself. While I do not intend to definitively resolve the question of authorship, I do review and expand upon the competing claims and attempt to construct a plausible evolution for the song, whose incremental and sequential evolution sheds light on more general processes of oral-tradition composition. Further, I outline the major contestations regarding the song's ownership and suggest how these reflect competing and changing conceptions of intellectual property rights.

The song "Guantanamera" is undoubtedly the most popular song to emerge from Cuba, and must also be ranked as one of the most familiar melodies in the world. Since its popularization in Cuba in the 1930s, it has been recorded innumerable times,¹ and has become a sort of icon

of Cuban popular culture. Although having certain associations with "folk" music, "Guantanamera," far from being a folk song in the public domain, is also a copyrighted, legally protected composition. Accordingly, its mass-mediated renditions have collectively generated prodigious sums of money. Disputes about the origin of the song have also generated ongoing lawsuits and considerable profits for the lawyers involved. Indeed, the "saga" of the song is one not only of its rise to worldwide renown, but also of decades of contestation regarding the circumstances of its authorship and the question of who deserves the profits it accrues. The controversies have also generated a fair amount of journalistic literature and legal reports. These, however, despite their quantity, leave several questions unresolved and, more importantly, do not attempt to address what from a scholarly perspective might constitute the most interesting and significant aspects of the case. The saga also comprises the way in which the song's status has been subject to different socio-economic milieus with incompatible notions of intellectual property rights.

"Guantanamera" at a Glance

The most standard account of "Guantanamera"'s origin—and in legal circles, the prevalent one—attributes the composition to Joséito Fernández (José Fernández Díaz, 1908–79). Fernández had been a semi-professional singer of Cuban popular songs—*bolero*, *son*, *guajira*, *danzonete*, and *guaracha*—since his teenage years. In 1928, he later related, he was the singer in a sextet performing such genres. It was the custom for such groups to end performances with a catchy, familiar song. Fernández stated that to vary this practice, he composed a new melody—that of "Guantanamera"—to which he set various text refrains, such as "camagüeyana, divina camagüeyana," or "villaclareña, divina villaclareña" (divine woman of Camagüey/Villa Clara). From 1933 he further popularized this song as the signature tune of his regular broadcasts on a radio show. In 1934, he attested, he had settled on the chorus "guantanamera, guajira guantanamera," in various subsequent interviews giving different accounts of how he arrived at that phrase. From 1938 he performed daily programs called "El suceso del día" (The Event of the Day) on the station CMQ, in which he would sing ten-line *décima* strophes, punctuated by the familiar refrain, about colorful daily events, especially crimes, accidents, and scandals. Through his popular radio broadcasts, the tuneful refrain soon became familiar throughout the island (see Sánchez Oliva and Moreaux Jardines 1999, 29–46, and Cedeño Pineda 1993).

Joséito's "Guantanamera" was in the form of a *guajira-son*. "Guajira" as a noun means "Cuban peasant woman," but as a musical genre name

it would derive from its adjectival use in the term *música guajira*, that is, "Cuban peasant music." Traditional *música guajira* consisted primarily of regional varieties of *punto*, in which *poetas* or *repentistas* (improvisers), typically accompanied by guitar and/or the guitar-like *tres* and other stringed instruments, would improvise topical verses in the Spanish-derived *décima* form. In some of these styles (such as that associated with Sancti Spíritus) singers would punctuate *décimas* with a refrain or chorus (*coro*, *estribillo*). In terms of structure, Joséito's "Guantanamera" resembled this format, in his use of the familiar refrain in between *décimas*. Since his *décimas*, in a given song, were thematically linked rather than independent, they would, in the Cuban context, be called *seguidillas* (although in Spain this term denotes a prosodic scheme and related song forms). In terms of style and rhythm, however, "Guantanamera" was a *guajira-son*, which retained some of the instrumentation and textual orientation of country music while using the syncopated quadratic rhythm of the urban popular *son*. According to some sources, Cheo Marquetti was the first to popularize the *guajira-son* genre in the late 1920s, combining *décimas* with a *son* rhythm based on the *montuno* (concluding call-and-response ostinato section) of the contemporary hit *son*, "Son de la Loma" (Sánchez Oliva and Moreaux Jardines 1999, 30). (The *guajira-son* also differed in this sense from the ternary-metered *guajira* popularized from around 1900 by theater-music composers like Jorge Anckermann [see Manuel 2004].)

Genres like the *son* and the *guajira-son* of the 1920s were evolving in a mixed musical atmosphere of residual oral-tradition rural culture and emergent modern capitalist music production. The *son* itself had originated in the preceding decades as a folk idiom from Oriente (eastern Cuba). For its part, *música guajira* forms—especially the varieties of *punto*—were more typical of oral-traditional folk idioms than of commercial popular genres in their reliance on improvised verses set strophically to endlessly reiterated and freely borrowed stock melodies, and in their customary performance contexts of informal fiestas rather than commercial mass mediation. At the same time, since the mid-nineteenth century, Havana had come to host a well-established capitalist music culture, with commercial marketing of sheet music, numerous music journals, and a thriving music theater scene. As soon as the *son* took root in Havana, it became embedded in this world of recording contracts, sheet music, and copyright considerations. For its part, the *guajira-son* evoked a pre-modern rural ambience in its general avoidance of trumpets and pianos, its occasional use of the *campesino*-oriented *décima*, and its bucolic texts which typically romanticized peasant life and the countryside. In other respects, however, it was a thoroughly urban and modern entity, composed, performed, and enjoyed by city-dwellers and commercially marketed from its very inception in the 1920s.

Fernández stated that for several years he did not bother to register his song, since it was so thoroughly identified with him throughout Cuba; eventually, however, he was advised to file a transcription of the chorus with the Cuban copyright agency, ACDAM (Sánchez Oliva and Moreaux Jardines 1999, 72). The notation is dated 1941, but the date marking appears to be hand-written over an earlier erasure, and the song was only registered with an American publisher after that date. (The song is still in its renewal term of copyright now.)² Fernández also released several recordings from 1941 featuring *décimas* on diverse topics punctuated by his version of the familiar refrain (which is shown as Example 10 below).

Around 1945, according to most sources (e.g., Seeger 1993, 128), Spanish-born but naturalized Cuban composer Julián Orbón (1925–91) composed a new melody for the lyrics of “Guantanamera,” using verses, in *cuarteta* rather than *décima* form, of José Martí’s “Versos Sencillos.” One of Orbón’s students, composer Héctor Angulo, had occasion to perform this version of the song, or a variant of it, in 1961 in the United States during a summer program he was attending. There it was heard by Pete Seeger, who started performing and recording this version, with the verses translated into English. A commercial recording of the song by the Sandpipers in 1966 brought the song to international fame in the English-speaking world and elsewhere, while *nueva trova* singers further popularized it in Latin America. It went on to become one of the world’s most familiar melodies.

Contestations and Complications

The legal ownership of “Guantanamera” has been entangled in litigation for decades, being divided not only by conflicting claims, but also by different versions of the song with different regional domains. The worldwide publisher of Joseíto’s version of the song for the world outside of Cuba has been the Spanish-based Ediciones Quiroga, which is represented by the Spanish performing rights organization SGAE (Sociedad General de Autores y Editores). However, the Seeger-Orbón version, with verses by Martí, is registered as a joint composition with the U.S. firm Fall River, while the Ramón Espigú version (discussed below) is registered with Peer International, which, however, only has rights to that arrangement outside the United States.³

As cited in Roger Wallis and Krister Malm’s discussion of the case (1984, 188–91), Seeger stated that he had been advised to copyright the song in order to prevent it from becoming public domain. Since the U.S. embargo against Cuba prevented payments from being made to

Fernández or any Cuban party after 1960, Seeger’s copyright claim enabled profits to be held in an escrow fund and later paid to Fernández when legally possible. Seeger writes in his book *Where Have All the Flowers Gone?* (published in 1993 but clearly written well before then):

Orbón lives in New York now and gets a small share of royalties. I’ve written the Cuban Author’s Rights Association that I will not accept any of the royalties. Most of the money, a large sum, sits in a N.Y. bank because a federal law will not allow money to be sent to Cuba. When it’s repealed (soon, I hope) money can be sent to Hector Angulo, and to the family of Joseito, and to the Marti Library in Havana, I guess. (Seeger 1993, 130)

In 1971 Seeger visited Cuba to meet and pay respects to Fernández; the two were photographed embracing, and were said to have become friends (see, e.g., Linares 1988, 5). Yet it was not until 1975 that Joseíto’s name was added to the Fall River credits, and in a 1976 interview he expressed bitter resentment against Seeger for stealing his song (in Wallis and Malm 1984, 190). Perhaps Fernández had become frustrated by the fact that he had yet to receive appropriate royalties from any quarter; according to some accounts, he received a single check from Seeger, which, however, did not approximate the amount due to him. Despite U.S. restrictions on payments to Cuban nationals, possibly Seeger could have made more strenuous efforts to remunerate Fernández, as he was often inattentive to financial matters, preferring to delegate many of these to his wife, his manager, and publishing companies.⁴ Some parallels may exist with the trajectory of Solomon Linda’s 1939 song “Mbube,” which Seeger brought to worldwide fame as “The Lion Sleeps Tonight”; again, despite Seeger’s good intentions, appropriate royalties failed to reach Linda, and Seeger later reflected, “I didn’t realize what was going on and I regret it...I have always left money up to other people. I was kind of stupid” (in LaFraniere 2006, 4).

However, in the case of “Guantanamera,” payments to Fernández may have been inhibited not only by the U.S. embargo, but also by policies of the Cuban Revolutionary government. First, as payments to Cuban citizens had to be made through the Cuban state (especially as ownership of dollars was prohibited), the government may have simply have retained whatever payments were made by foreign sources to Fernández, as it is routinely accused of doing in many other cases of international remunerations to Cuban nationals. Further, the Cuban government effectively renounced international copyright agreements between 1967 and 1974—for both ideological and pragmatic reasons, as will be discussed below—and it failed to reestablish reciprocal agreements with non-socialist countries until after 1988, and even since then has been inefficient and lethargic in pursuing claims for royalties due to Cuban musicians.⁵

the conflicting claims to ownership, together with the prodigious sums of money involved, have generated ongoing litigation. An early legal challenge to the ownership of the Fall River version, with its setting of Martí's "Versos Sencillos," was allegedly brought by Orbón against Seeger; another source attributes this version to Cuban guitarist Leo Brouwer, who allegedly sang it in 1961.⁶ Litigation culminated in a suit by Fall River against Quiroga attempting to dispute Fernández' authorship of the song and, accordingly, SGAE's right to collect on behalf of his heirs, whom they had represented since 1985. The suit was triggered by the use of the song in the 1998 film *Antz*, and a dispute over whether Fall River or Quiroga/SGAE were to be remunerated for it. In 2001 the two parties negotiated a compromise settlement, whose terms are confidential, but ownership remains contested in other quarters. An informant at Fall River informed me that upon this settlement the money in its escrow account was probably transferred to Quiroga, to be distributed to Joseíto's heirs by SGAE. Meanwhile, the Harry Fox, ASCAP, and BMI websites list several dozen versions of the song registered to different authors, including Seeger, Orbón, Fernández, and Ramón Espigúl (and diverse misspellings of these names).

In 2001, ethnomusicologists Gage Averill, Benjamin Lapidus, and I served as consultants to opposing law firms in litigation regarding the song. I provided consultation for a firm representing SGAE, which controls and administers the rights to "Guantanamera" as held by Joseíto's heirs and Quiroga. On the opposing side, Lapidus (my then student and present colleague!), contracted by Averill, advised attorneys representing Fall River in challenging SGAE's rights to the song, and especially disputing the notion of Joseíto's composition of it. Lapidus traveled to Cuba to research claims regarding prior creation of the song, especially as involving Herminio Wilson. Our involvement in the case enabled us to closely examine some of the conflicting claims. My goal in this article is not to offer a verdict on these claims, but to suggest some disinterested and original perspectives on the evolution of the song, and to comment on some of the socio-musical factors involved.

Fall River's challenge to Quiroga's rights to the song rested primarily on arguments that Fernández was not the composer of the song's refrain, but rather that the refrain was created earlier by others. (Fall River, however, would presumably seek to retain rights to the Seeger-Orbón version, with its setting of Martí's verses, and its slight alteration in the refrain melody, discussed below.) The heirs of these earlier musicians, such as Wilson, might not in any case themselves be able to receive royalties from the song's usages, as whatever rights should or could have been accorded to them would have expired by now, but recognition of their supposed creation of the song would undermine Joseíto's claim to ownership and, by extension, SGAE's right to collect on their behalf.

Reconstructing Origins

While the diverse arguments regarding the evolution of "Guantanamera"'s melody have their own varying degrees of legal validity, I present them here for the sake of the light they shed on the manner in which the song appears to have evolved—a manner which appears to be at once typical of oral-tradition folksong, and inherently problematic for purposes of assigning legal ownership. Attention has focused not on the melody of the verses, nor on the verses themselves, but on the catchy refrain, which constitutes the "hook" and familiar essence of the song. It is the authorship of this refrain that has been the key issue in litigation, and that is also the focus of this article.

Two Cuban scholars have argued for an essentially nineteenth-century origin of "Guantanamera." Author and musicologist Alejo Carpentier, in his well-known book *La música en Cuba* (1946, 30), wrote,

A Havana radio station recently enjoyed great success with a thoroughly *campesino* song called "La Guantanamera," which had been brought to the capital by authentic singers... Fine, but the music of the first two phrases [the chorus] of "La Guantanamera" was none other than that of the venerable *romance* [narrative ballad] of Gerineldo, in its Extremeduran version. [Extremadura is a state in southwestern Spain.]

It is difficult to assess or make use of this assertion, which attempts to link the Afro-Cuban-influenced *guajira-son*—with its distinctive tune set to a chordal ostinato over a syncopated rhythm—to peninsular Spanish narrative ballads, with their simple strophic, and often modal melodies. Victoria Eli, a Cuban musicologist residing in Spain and an authority on Spanish as well as Cuban music, regards the connection as highly dubious (personal communication).⁷

Of somewhat more rigor and utility, although enigmatic in its own way, is the discussion of "Guantanamera" by the formidable late Cuban musicologist Natalio Galán, in his magisterial *Cuba y sus sones* (1983). Galán posits formal continuities between "the guajira guantanamera"—which he refers to more as a form than a song—and Spanish Baroque dance music. The ancestry would commence with the *chacona* and *passacalle* (or *pasacallo*), which originated in the late 1500s in Afro-Latin New World music (of Mexico and/or Cuba), as dance-music genres featuring variations on syncopated chordal ostinatos in triple meter with persistent hemiola. While these became classicized variation forms in the European Baroque, the term "passacallo" also continued to denote the chordal guitar ostinato punctuating sections of the eighteenth-century Spanish bolero, a dance suite. In the early 1800s this form of the bolero took root in Cuba. By 1900, the Cuban bolero was evolving in quite a distinct direction, as a creolized romantic dance song in quadratic meter. Meanwhile,

Galán writes, the *pasacallo*—in the form of a I–IV–V ostinato—took on its own life, variously, in the *son* of Oriente and the *montuna* of Guantanamo, whence, he stresses, emerged “the guajira guantanamera” (1983, 314–17).⁸ He writes,

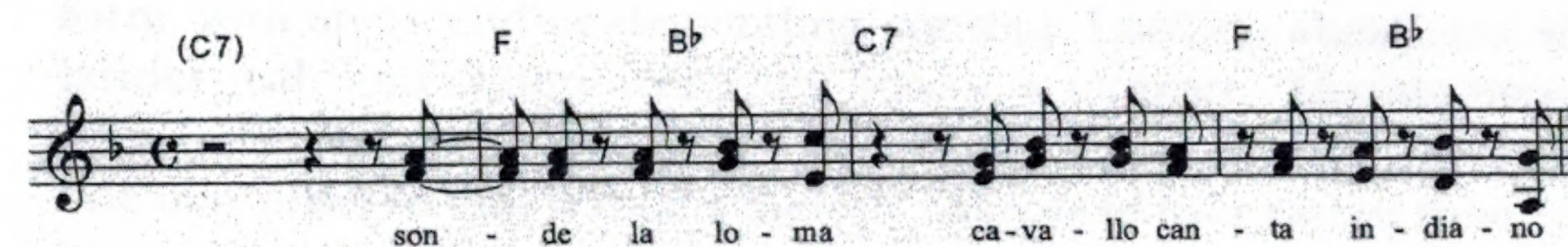
Among the Cuban contributions to world pop, the *guajira guantanamera* is the most recent gift, which perpetuates within it a Baroque tradition realized in the *passacaglia* of Couperin, Handel, Bach, [...] who took as point of departure a chordal pattern as a basis for variations...

For Cubans, the *guantanamera* was born on the radio in 1930, while they are completely unaware how it related to the *pasacallo* of the creole bolero of 1830, which for its part copied the Spanish bolero of 1730, an echo of the *passacaglia* which would pervade the European Baroque, taking root also in the town of Guantanamo, in the eastern province of Cuba in the year?... a folk occurrence whose result was regarded by local inhabitants as being an invention of intuitively musical mulattos. (1983, 314–15)

Galán’s argument is at once erudite and ambiguous. For legal purposes, it poses no challenge to standard beliefs about the origin of the melody—the legally protectable part of the song—as he explicitly refers to this tune as characterizing the form only since 1930.⁹ One might question why the notion of a chordal ostinato (such as accompanies “Guantanamera” and other *guajiras* and *sones*) should be identified particularly with the *pasacallo*, when such ostinati pervade so many creole Latin American music genres. It is unclear if Galán is asserting more specific formal affinities between “Guantanamera” and the ancestors he cites. Nevertheless, the general continuities he posits are undeniable and constitute important parts of the long-term history of the song.

If it is difficult to link “Guantanamera”’s distinctive tune to precedents in seventeenth-century Spain, it is not hard to demonstrate affinities between the tune of the catchy refrain and that of other earlier *son* and *regina* refrains—for example, that of Miguel Matamoros’ “Son de la Loma.” As mentioned above, the refrain of this popular song of the late 1920s had served as a sort of model for the *guajira-son* in general. With this template in mind, Fernández allegedly began singing a new melody as his closing item for performances, using the refrain which was later set to the words “guajira guantanamera” (Sánchez Oliva and Moreaux Jardines 1999, 30–31). Whether or not Fernández composed the refrain and was inspired in this manner, the structural similarities of “Son de la Loma” and the early versions of “Guantanamera” as shown in Examples 2, 3, 4, and 6 below, are striking. The *coro* (chorus) of “Son de la Loma,” as was typical of many *sones* of that period, consists of a four-bar refrain comprising two phrases in a rising-falling, consequent-antecedent pattern, set to a I–IV–V chordal ostinato. Example 1 shows a rendering of this *coro* (transposed to the key of F major).¹⁰

Example 1. Chorus of “Son de la Loma”



In performance, this responsorial *coro* would be alternated with semi-improvised “calls” (*inspiraciones*, *soneos*) by the lead singer in the *montuno* section, which followed the verse section—a practice distinct from a *guajira-son* like “Guantanamera,” in which the *coro* would more typically be used as a refrain to punctuate (rather than follow) verse sections.

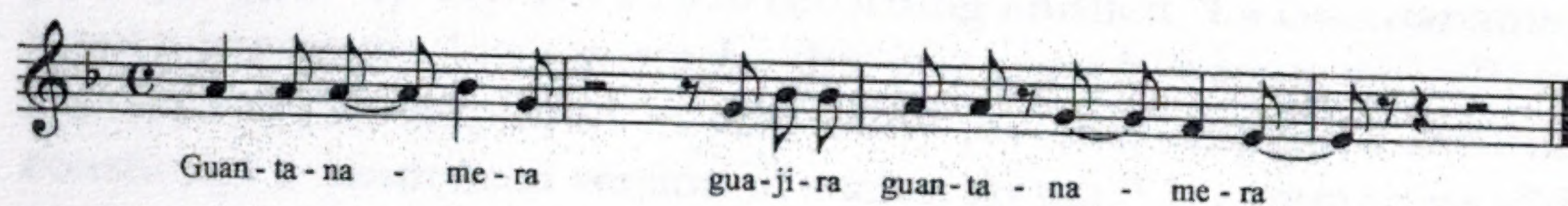
Insofar as the emerging *guajira-son* of the 1920s used the chorus of “Son de la Loma” as a model, then it is not surprising that the refrains of that song and of “Guantanamera” resemble each other closely. The resemblance is not as striking as to suggest plagiarism or to compromise claims of “Guantanamera”’s authorship, but it does illustrate how that refrain commenced as a very typical and conventional tune, closely resembling extant melodies.

Considerable evidence—oral, recorded, and written—suggests that the familiar refrain itself evolved in an incremental fashion from the late 1920s. Much journalistic and legal attention has been devoted to claims regarding the role of Herminio “el Diablo” Wilson (1904–97), a bandleader, *tres* player, and prolific composer from Guantánamo. Wilson claimed that in 1928, inspired by a saucy young woman passing by, he set the words “guajira guantanamera” (“peasant woman of Guantánamo”) to a melody he had been playing on the *tres*. Two very similar versions of his chorus are shown as Examples 2 and 3 below. Example 2 derives from a manuscript on “Guantanamera” by Cuban musicologist Ramón Gómez Blanco, who does not indicate his source; Example 3 is from a 1993 taped interview with Wilson, in which he briefly sang his version of the chorus.¹¹ Subsequent to the chorus’ creation, Wilson’s group (without him) performed the song in Havana; it is quite conceivable that Fernández heard them perform it there, and/or in a visit to Guantánamo a few years later.

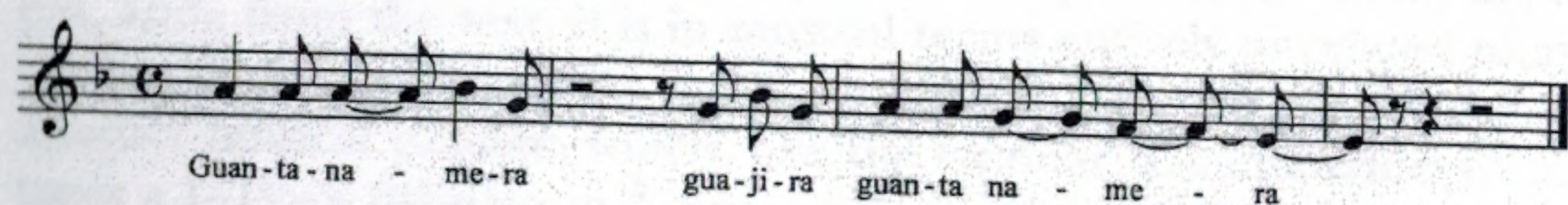
As mentioned above, in 2001 attorneys representing Fall River contracted Benjamin Lapidus to conduct research in Cuba regarding Wilson’s alleged role in composing the song, with the aim of challenging Joseíto’s authorship and, by extension, SGAE’s right to collect royalties relating to the song. In Guantánamo, Lapidus was told that Wilson had initially sought to register his early refrain of the song, but had been informed that as an eight-bar entity, it was short of the minimum of sixteen bars required of a formal composition. Later, when the song became an international hit, Wilson approached the Cuban copyright

agency about acquiring rights to the song but was discouraged from pursuing the matter. Nevertheless, in 1993 a civil suit and formal investigation were undertaken in Havana, in which over fifty informants attested to Wilson's having composed the early version of the refrain. Since the rights to this version may have already expired by that point, Lapidus suspects that the claimants—especially Wilson and, subsequently, his heirs—were motivated less by pecuniary goals than by a sense of local pride in seeking recognition for the role of this cherished son of Guantánamo. Several of Wilson's supporters evidently felt that the musical heritage of Guantánamo had been usurped by Havana's *faux*-peasant Fernández, who had been able to garner fame by virtue of his greater access to the mass media and the music industry. Some of Lapidus' informants expressed resentment that Havana-based accounts of the song's genealogy had effectively erased Wilson's role, as was the case, for example, in the book *La Guantanamera*, by Iraida Sánchez Oliva and S. Moreaux Jardines (1999), which unquestioningly upholds Joseíto's authorship and makes no mention of Wilson. (Curiously, Moreaux Jardines holds power of attorney for Wilson's heirs.) It was suggested to Lapidus that Moreaux had either wished or been officially advised "not to stir the pot" by questioning Joseíto's ownership—perhaps because that might endanger SGAE's royalty payments to the Cuban government. Lapidus further observes that Wilson's refrain is typical of other *montuno* refrains that were current in early twentieth-century *tres*-based dance genres (such as *son* and *regina*) of eastern Cuba and especially Guantánamo (Lapidus, personal communication).

Example 2. Wilson's chorus of "Guantanamera" as presented by Gómez Blanco



Example 3. Chorus of "Guantanamera" as sung by Herminio Wilson in 1993



Wilson's account is certainly plausible, and for the purposes of this article, we may take his version(s) as representing an early stage in the evolution of the familiar refrain. Far from constituting a dramatically original melody, it bears clear affinities with other earlier *son* refrains, such as that of "Son de la Loma"—especially, as we have mentioned, in

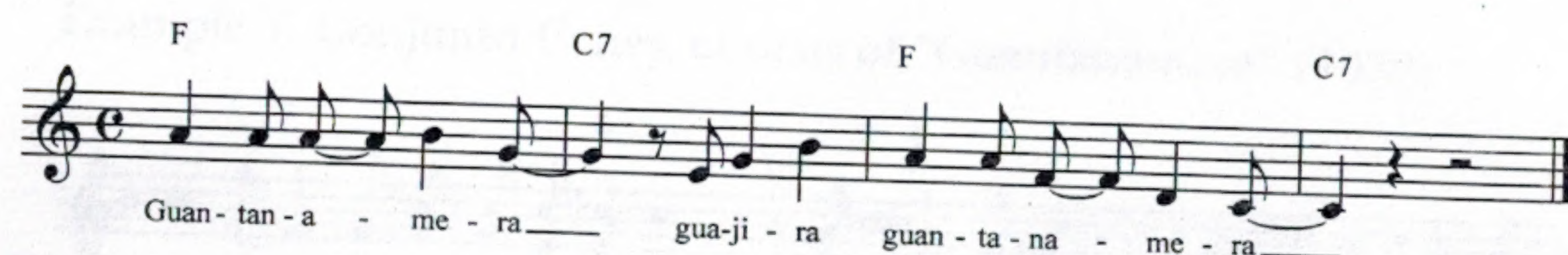
its four-bar structure comprising two phrases in antecedent-consequent form, with an ascending-descending contour. Looking ahead, the similarities with and differences from Joseíto's ultimate "Guantanamera" chorus (Example 10 below) are also evident. Among the differences, one may observe that Wilson's melody consists of four rather than eight bars; in place of the distinctive ascent to or commencement on D (the sixth degree, in relation to the underlying F chord), it begins on A (the third degree of that chord), as if constituting a second voice singing in approximate harmony to the standard version of the refrain; the rhythm is somewhat different; and the melody descends not to the low C but only to E, such that the range is much narrower, constituting a diminished fifth rather than a major ninth. In general, much of the dramatic and expressive character of the standard version is absent in Wilson's chorus, which can be seen as a simple and skeletal predecessor, unlikely to have achieved the international popularity of Joseíto's version.

If, for copyright purposes, a court of law were obliged to assess Wilson's role in the authorship of "Guantanamera," it would need, first, to decide if Wilson's story were valid, and second, it would need to rule on the relationship of Wilson's chorus to that associated with Fernández. As one attorney commented to me in relation to this case, "If you take a song and change it a bit, it's still the same song, legally"—and it would remain the property of the original copyright holder. Thus, if Joseíto's chorus were regarded as a mere improvement of Wilson's, then Joseíto's claim to authorship would be in doubt. However, a song or fragment may also be creatively altered to the extent that it becomes, in copyright terms, a new entity. Accordingly, a court might well be inclined to rule that Joseíto's chorus was significantly new and different (and arguably superior), such that it constituted an original, legally protectable entity. For the purposes of this article, we need not offer opinions on this conundrum. In fact, there appear to be at least four further versions of the chorus that emerged as it evolved towards its definitive incarnation.

One of these versions involved Ramón Espigúl, a prominent actor in Havana's *teatro bufo*, a sort of local blackface minstrelsy in which he played the role of the *negrito* (a rough Cuban counterpart to minstrelsy's Jim Crow character; see Moore 1997, 46, 249). Espigúl was celebrated for his skill at whistling and, more relevantly, for singing topical verses punctuated by a version of the refrain "guajira guantanamera" (Miranda 2000; Vizcaino n.d.). In 1930 Espigúl registered a written version of "La Guantanamera" with the Registro de la Propiedad Intelectual de Cuba and Peer International, which was at the time the most active American publishing company in Cuba. He also recorded a different version of the song for RCA Victor (30054-A), which is completely distinct from the familiar "Guantanamera" and thus has nothing to do with its evolution. Nevertheless, his written version appears to constitute an intermediate

step in the development of the popular song (the chorus is presented in Example 4). (The verses of the song consist of three *décimas*, mostly sung around the upper C, and descending to the lower C.)

Example 4. Chorus of “Guantanamera” registered by Ramón Espigúl in 1930

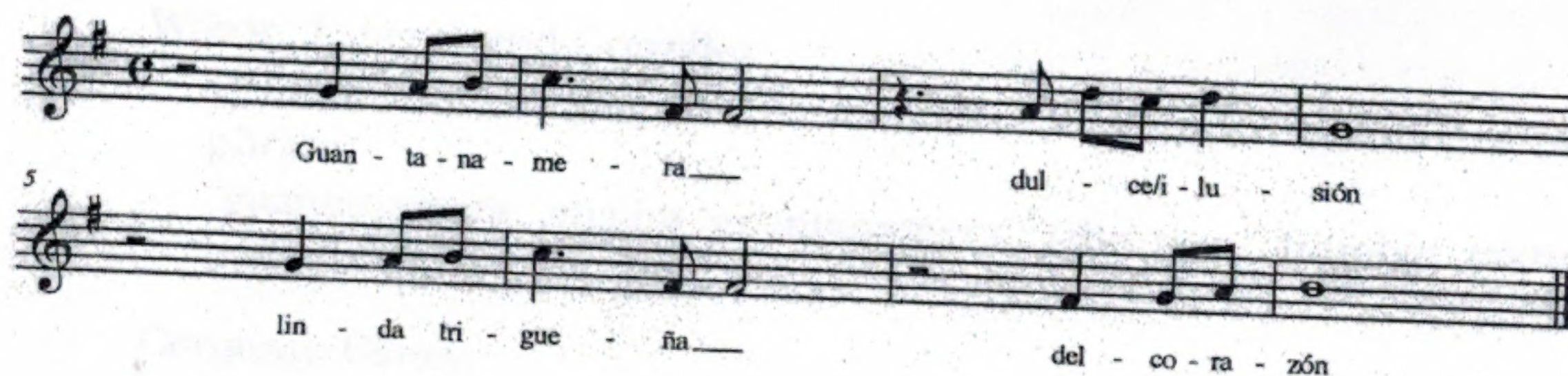


This version of the refrain can be seen as a variation on Wilson’s version, moving somewhat closer to the definitive version associated with Fernández and Seeger. Like Wilson’s chorus, it consists of only four measures rather than eight, and commences on A, not D, never ascending above B^b. It differs from Wilson’s version primarily in its concluding descent, like Joséito’s version, to the low C.

Since Espigúl’s version of the song, unlike that of Wilson, was actually registered, and since he was well known in Havana, some writers have opined that he, rather than Wilson or Joséito, was the true author of the familiar refrain. Fernández, some argue, adopted Espigúl’s version, changing it slightly, and managed through his radio performances to become regarded as the author (Miranda 2000).

Cuban musicologist María Teresa Linares, however, appears to question Espigúl’s role, claiming that the written version she saw, like his 1930 recording by the same name, bears no relation whatsoever to the standard version of the song, nor, to the written one presented as Example 4 (1988, 3–4). Espigúl’s 1930 recording entitled “La Guantanamera” is not a *guajira-son*, but a *guaracha*, that is, a *teatro bufo* song, typically with a short refrain, employed in minstrelsy sketches. Espigúl’s recording constitutes a condensed version of such a sketch.¹² It commences with a spoken dialogue between Espigúl and actress María Gómez, and then segues to a song fragment in a fast *danzón* rhythm, opening with the word “guantanamera” as shown below in Example 5. As is readily apparent, aside from the text, it is in musical terms entirely unrelated to any version of the familiar song by that name. The record then segues to another musical passage, which, like the familiar “Guantanamera,” features a I–IV–V ostinato in $\frac{4}{4}$, but contains neither the melody nor the lyrics of “Guantanamera.” As such, it is mistaken of certain authors to cite the record as posing any sort of challenge to Joséito’s authorship. Questions also exist regarding the registered score, which, according to some, did not surface until after Joséito’s death.

Example 5. Excerpt of “La Guantanamera,” recorded by Ramón Espigúl (1930)



Nevertheless, the existence of Espigúl’s score, as shown in Example 4, certainly supports the view that he “created” the chorus in the sense of modifying Wilson’s version. While citing Espigúl as author on a recording might constitute an attempt to avoid payment to SGAE or Fall River, it also might represent a legitimate variant tradition.

In the 1960s, for example, Cuban singer Celio González (1924–2005) recorded a version of the song, citing Espigúl as author.¹³ González’s version of the refrain, shown in Example 6 (transposed for purposes of comparison from Eb to F major), differs from that attributed to Espigúl in having a harmonizing upper voice resembling the definitive and by then well established version popularized by Fernández and Seeger; its lower (and barely audible) voice also differs slightly from Example 4. However, González’s version shares with the pre-Joséito versions—including the Espigúl variant—a distinctive feature, namely, that it is merely a four-bar chorus (repeated twice) rather than an eight-bar melody. Possibly González intentionally cited Espigúl because he chose to render this “archaic” version of the refrain rather than the more familiar one. And indeed, rather than being inherently inferior, it has its own distinctive character as a short riff more typical of Afro-Cuban music than Joséito’s more lyrical, “song”-like melody. The four-bar version accords very well with González’s up-tempo, percussive, and “funky” recorded version of the song.

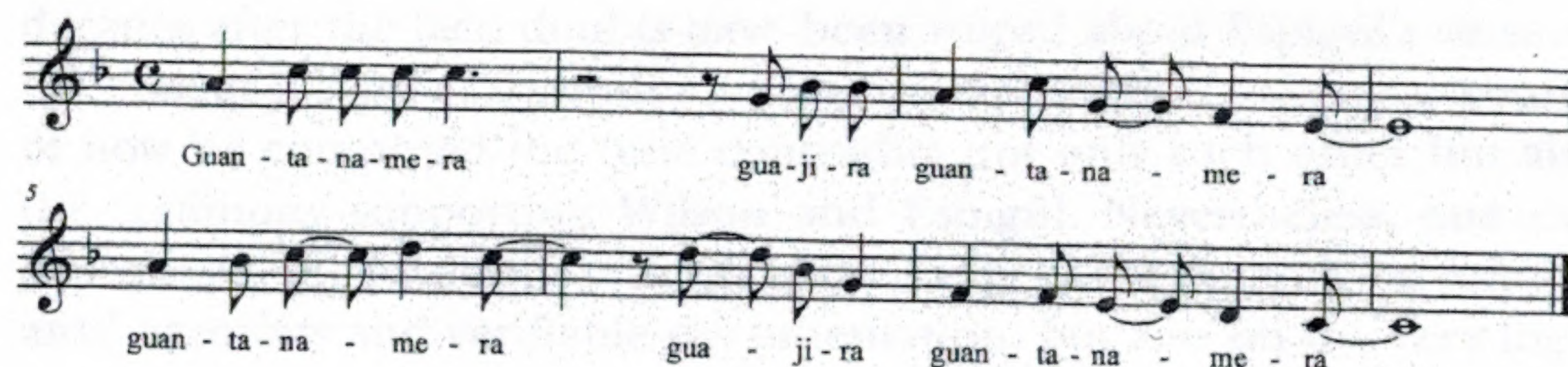
Example 6. Chorus of “Guantanamera” as recorded by Celio González (credited to Espigúl)



Subsequent to such archaic versions of the song, as represented by the Wilson and Espigúl versions, an intermediate step toward the definitive version of the song appears in the form of a 1939 recording by the Cuarteto Caney, a New York-based ensemble led by Cuban immigrant

represents a version more or less similar to that sung by Fernández in the late 1930s. (Fernández, however, generally sang solo, without an accompanying *segundo*, in recordings and on the radio.) Accordingly, the next step—and the penultimate one—in the song’s definitive evolution is represented by Joseíto himself, in the form of the notation which he registered supposedly in 1941, but at least in the United States a few years later, shown here as Example 9:

Example 9. Chorus of “Guantanamera” as registered by Fernández (1941)



Like the Caney version, this chorus is an eight-bar entity, starting with an ascent from A to C; in its half-cadence descending to E, it resembles the upper-voice conclusions of both halves of the Caney version. The final cadence descends to the low C, as does the lower voice of the Caney version (and that of Espigúl’s). Meanwhile, the distinctive phrase A–B^b–C–D–C that appeared at the very end of the Caney recording is now shifted to the third or penultimate phrase. The final phrase descends via the distinctive D–B^b–G arpeggio to the low C.

Presumably after Joseíto registered his written version, he soon introduced a few small but significant changes, affording the version of the song shown in Example 10:

Example 10. Chorus of “Guantanamera,” as popularized by Fernández



The changes in this version consist of the commencing ascent to the high D and the way the second phrase (1B) turns around and concludes on the high C. The final touch, according to Seeger, was added

by Orbón, who changed the first note (on “Guan-”) to a D rather than a C. Seeger writes, “Credit for the music should go to Joseíto [*sic*] and to Orbón [*sic*], who added an important note, the first note of the chorus...If one bad note can ruin a song, one good note can make it” (1993, 129–30). It is this version that Seeger, the Sandpipers, and others popularized and standardized (even in Cuba) and that became one of the more familiar melodies of the twentieth century.

The extraordinary popularity of this tune clearly does not derive from the star image of its singer, from marketing gimmicks, or from any particular extra-musical factors. Rather, “Guantanamera” is obviously an intrinsically attractive tune, representing the culmination of a series of evolutionary steps (and whose text poses no great language barriers, even if often misunderstood by non-Spanish speakers as something like “One ton a melon”).¹⁵ At the risk of venturing into subjective criticism, it may be useful here to point out some of the features that have made it so appealing to so many people. These observations may also highlight some of the contrasts with the earlier versions.

As mentioned before, the classic version of the chorus comprises an eight-bar melody, whose two halves can be seen as standing in an antecedent-consequent relationship, with the first one ending in a melodic half-cadence on the high C, and the second descending definitively to the low C. Each of these two phrases can itself be said to comprise two phrases, also in antecedent-consequent relation; thus, as indicated by the numbers in Example 10, the refrain’s phrases could be labeled 1A, 1B, 2A, 2B. (There might also be other plausible ways of analyzing this melody.) The *coro* (in its final Seeger-Orbón version) opens on a dramatic, melodically unstable D appoggiatura, which, in phrase 1B, resolves to the high C, which is consonant with both F and C major chords. Phrase 2A ascends in a suave and stepwise manner to the D—which had been introduced somewhat abruptly in the first phrase—, while the final phrase descends a full octave to rest on the low C, which is consonant with the C chord. (The C chord, rather than functioning as a dominant or fifth degree, shares a tonal function with the F chord, and Cuban renditions of the song almost invariably end on the C; see Manuel 2002.) While we need not compare the resulting melody to Beethoven’s Fifth Symphony, the structure of the refrain, with its composite antecedent-consequent phrases, is inherently balanced and satisfying. As a “song”-like eight-bar entity, it is also structurally different from a four-bar *coro* like that of “Son de la Loma,” which can merely be used as one half of a call-and-response format.

It is also significant that whether or not earlier versions of the refrain were sung in the two-voice harmony typical of the contemporary *son*, Joseíto’s version is clearly designed to be sung solo, in ranging from the high D to the low C. That is, while it is possible and even common to

hear two-part harmonized versions of his refrain, with the *segundo* either above or below Joseíto's melody, the final phrase does not lend itself to being harmonized without obscuring its distinctive contour; accordingly, this part, if sung by two voices, is generally rendered more or less in unison.¹⁶ Joseíto's version can be seen to some extent as being constructed out of selected fragments of the individual lead and *segundo* parts of earlier versions.

At this point we are in a position to make some general comments about the evolution of the famous refrain. Ambiguities definitely remain—Wilson's role is supported only by oral testimony supplied decades after the fact, doubts have been voiced about Espigúl's version, the date of Joseíto's copyrighted notation is uncertain, and his accounts of how he composed the tune contradict not only each other but also the testimony supporting Wilson and Espigúl. Nevertheless, one can hypothesize a plausible evolution of the song, based not only on informants' accounts and verifiable documentation, but also on the very logic suggested by the versions themselves, which seem to proceed—as seen in Examples 2–5 and 7–10—in a thoroughly sequential fashion. A likely scenario is the following: In 1928 Wilson composed his *coro*, which is an utterly conventional entity closely resembling contemporary *son* refrains like that of "Son de la Loma." This *coro* became known in Havana, where it was modified, popularized, and registered by Espigúl. It was also adopted by Fernández, who, over the course of the 1930s, introduced various changes, including *after* he registered the notation of the song, probably in the latter part of the decade. The more definitive version of the chorus took shape by the early 1940s, when Joseíto recorded it, and received its final touch at the hands of Orbón. Its evolution from a folk-like to a modern entity is reflected in its very structure, which changes from a simple, conventional four-bar tune to a lyrical, song-like eight-bar melody with a large range and closed, symmetrical internal structure.

Such a scenario would certainly contradict Joseíto's claim to have created the refrain—text and tune—more or less from scratch; however, it might still accord him the essential role of elaborating the refrain into its classic form. Some Cuban writers support this hypothesis. Musicologist Helio Orovio, for example stated:

The song reached Havana in those years [the 1920s and 1930s]; Cheo Marquetti heard it, added some *décimas* and converted it into a *guajira-son*—the first part *guajira*, and the second, the *montuno* of the *son* created by Herminio García Wilson... This *guajira* started to be sung by Joseíto Fernández on the radio; he incorporated some changes in the melodic aspect, in the vocal inflection; he made some contributions to the melodic-rhythmic structure. (in Cedeño Pineda 1993, 61)

From a legal perspective, as suggested above, one could argue that Fernández merely tinkered with an existing song, created earlier by Wilson and Espigúl. Alternately, and perhaps more convincingly, one could insist that he played a documented role in introducing the structural changes that would transform a conventional ditty into a melody ripe for world renown and that in that sense he should be regarded as the song's rightful author.

Legal polemics aside, the reconstructed development of the refrain provides a remarkable example of how a song can evolve in an essentially oral tradition. The ability to reconstruct (however problematically) such an evolution could only obtain in a historical moment in which such an oral tradition was intersecting with modern forms of documentation. In classic "folk" manner, the refrain appears to have been freely altered and refined by different musicians, who were not constrained by modern legal or aesthetic notions of ownership or creativity (who nevertheless, in Joseíto's and Espigúl's cases, did eventually follow the advice to register their versions). Also reflective of quintessential "folk" creation is the collective nature of the composition process—with the collectivity being sequential rather than simultaneous. The distinction from classic folk creation, in this case, is that the individuals are known rather than anonymous, the stages of composition were documented in various ways, and the issue of ownership did eventually acquire great importance because of the money involved.

Competing Notions of Ownership and Intellectual Property Rights

If the evolution of "Guantanamera"'s famed refrain has been convoluted and contested, the commercial and ideological climates conditioning the song's ownership and profits have been no less contradictory and incompatible. In effect, the song's trajectory as a commercial entity can be seen to have been conditioned by at least three distinct sorts of socio-musical milieus, with accordingly contrasting notions of ownership and intellectual property rights.

The first of these was the milieu of music performance and composition in Havana and provincial Guantanamo in the early twentieth century. It would be erroneous to regard "Guantanamera" as a "folk song," or its creators as folk musicians. Fernández, Wilson, and Espigúl were urban professional musicians operating in the lower, performance-oriented echelons of a commercial entertainment scene. However, as I have suggested, both the step-by-step creation of the chorus and the way Fernández used it were in several ways more typical of pre-modern or

early modern conventions than of modern commercial ones. All three musicians can be seen as having one foot in the tradition of Cuban *música guajira*, in which melodies and texts were freely borrowed, recycled, and modified; in this milieu, an artist's merit lay primarily in his skill at improvising verse, his command of repertoire, and his general talent for performing, rather than his compositional talents. Also typical of such oral tradition or early modern conventions was Joséito's use of the chorus as a refrain punctuating topical verses which were performed once live (e.g., on the radio) and then essentially forgotten, rather than being recorded, registered, and treated as fixed, autonomous compositions (or, for that matter, as jazz-type improvisations able to earn mechanical royalties). Further, a thoroughly modernized commercial milieu would be unlikely to accommodate such a step-by-step evolution of a melody, as any attempt by a musician to register or profit from his "improvement" of someone else's registered tune would be vulnerable to an accusation of copyright infringement by the owner of the earlier version. Wilson, Espigúl, and Fernández were most active precisely during the early advent of commercial recording in Cuba in the early twentieth century, with its new notions of copyright, allocating a new dimension of financial importance to compositions and a system of registration that favored individual rather than collective claims to authorship and ownership.

By the time Seeger popularized the song internationally and contacted Fernández, the song's status in Cuba had come to be conditioned by a different socio-economic milieu, namely, that of the communist Revolution. One dimension of this situation, as mentioned, was the hostility between communist Cuba and its enemies—especially the United States—, which, among other things, appears to have inhibited the transmission of royalties to Fernández and his heirs. Another dimension involved the changed economic policies in Cuba, including not only the Cuban government's effective withdrawal from international copyright agreements, but also its abolition of copyright within Cuba itself. To some extent, these policies were pragmatic (whether judicious or not), enabling Cuba, for example, to reprint foreign textbooks without paying royalties. However, as Robin Moore notes, they were also inspired by the ideological fervor of the late 1960s and early 1970s, when anti-capitalist and anti-imperialist convictions generated new internal policies regarding intellectual property rights. Moore, who describes this development in some detail, writes:

[E]xecutives considered musicians to have less need of royalties in a socialist society given that they were guaranteed a higher wage, free health care, and pensions... Additionally, the concept of paying artists extra royalty income clashed with Marxist ideals of egalitarianism and Che Guevara's drive to orient Cuban society around moral rather than material incentives.

Leaders felt art should be offered freely to the people, that it should not exploit them with fees that would end up in the pockets of a single composer, that it should be a spontaneous gift. Copyright, from such a perspective, represented everything that was wrong about the capitalist system. (Moore 2006, 77)

Similarly, Ariana Hernández-Reguant (2004, 15) notes:

Like all work, artistic work became wage labor. No profits derived from ownership over the labor product were recognized. Musicians, therefore, received no royalties from record sales, and authors were not paid copyrights.

While an internationally popular composer like Cesar Portillo de la Luz might still manage to collect royalties via Mexico, Spain, or elsewhere,¹⁷ the renunciation of copyright in Cuba would well have constituted one further obstacle to Joséito's remuneration. And if the step-by-step character of "Guantanamera"'s early melodic evolution represented one sort of collectivism in artistic creation and ownership, Cuban policies of the early 1970s represented another, informed by Marxist egalitarianism rather than early modern oral tradition.

Despite the changes in recent decades, Leonardo Acosta (personal communication) observes that many Cuban musicians still tend not to think in terms of copyrights and lawsuits, and that attitudes toward intellectual property to a considerable extent remain colored by political notions. Political considerations may also color theories regarding the evolution of "Guantanamera" itself. One might wonder if the fact that Orbón defected from Cuba has anything to do with why the relevant publications by Cuban authors Linares (1988, 5) and Sánchez Oliva and Moreaux Jardines (1999) deny any creative role to him. Conversely, some allege that political factors have led writers outside Cuba to deny Joséito's authorship of the song, especially since Fernández not only remained in Cuba but also sang and spoke out in favor of the Revolution and its agrarian reforms.¹⁸

Beginning in the late 1970s and culminating in the late 1990s, Cuba gradually reinstated domestic copyright practices, reestablished international copyright agreements, and belatedly attempted to collect the royalties its composers and artists were owed from abroad (see Moore 2006, 76–77; Hernández-Reguant 2004; and Soto Granado 2001). As before, the change in policy was generated both by practical considerations—including the desire to obtain state revenues by taxing musicians' international earnings—and ideological ones, reflecting, in some respects, a greater flexibility in dealing with the outside world after the collapse of the Soviet bloc. Hernández-Reguant (2004) has analyzed the new state policy and its implicit notions of intellectual property, observing how they represent a hybrid of Marxist ideals, capitalist profit incentives, a

new valorization of cultural creation, and purely practical responses to the changing situation of "late socialism."

The Cuban accommodation, however incomplete, to standard international and domestic copyright norms can be seen as a final step in "Guantanamera"'s definitive immersion in the global industry and modern capitalist copyright standards and practices. At this stage, the accumulated ambiguities and alternative versions of the song, together with the prodigious sums of money involved, combine to generate ongoing litigation, along with secondary profits for the many lawyers and their consultants (including the author of this article, in a limited capacity).

Concluding Thoughts

Recent years have seen the publication of several articles documenting the convoluted trajectories of songs, tunes, or musical techniques that circulate internationally after being plucked from sources on or beyond the margins of the modern capitalist world, be it a tribal Taiwanese folk song (Guy 2002), a South African tune (LaFraniere 2006), a Solomon Islands lullaby (Feld 2000), or a Pygmy yodeling style (Feld 1996). Steven Feld's analyses highlight how the "schizophonic" circulation of such sounds and techniques tends to exploit and bypass the originators of such songs and sounds; a moral indictment of the West—including such arguably innocent and well-intentioned figures as Herbie Hancock and Jan Garbarek—resonates, often by innuendo rather than open argument, throughout Feld's writing. The case of "Guantanamera" certainly follows the standard sordid pattern in the effective denial of royalties to the composer(s), whether Fernández, Wilson, or others. Unethical parties in the capitalist world are not lacking, as, for example, both Cuban and North American sources reiterate that one constant, from the 1930s to the present, has been the denial, by various unscrupulous means, of appropriate royalty payments by Peer International.

At the same time, the very complexities of the "Guantanamera" saga may be more typical of global musical flows, and of the collision of oral tradition and modernity, than the somewhat Manichean West-versus-the-rest scenario portrayed by Feld. Such a dualistic analytical framework would have considerable difficulty accommodating the intricate tensions and conflicts obtaining in the "Guantanamera" saga, including those involving Guantanamo versus Havana, Marxist copyright notions versus capitalist ones, internal polemics within Revolutionary Cuba, the role of a political progressive like Seeger in the capitalist world, and the complex relationships between the contributions of Wilson, Espigúl, Fernández, Angulo, and Orbón. The perversities of the "Guantanamera" saga can

be seen in some respects as paradigmatic of the encounter of a local, provincial music scene—itsself replete with competing and conflicting individuals and institutions—with a global modernity similarly divided by individuals, governments, and commercial entities, all with their own conflicting agendas.

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Notes

1. One website lists some 250 recordings of the song (club.telepolis.com/sondecuba/espana/guantanameraes.htm).
2. Barry Sloetnick of Loeb & Loeb, New York (personal communication). Sloetnick's observation might contradict the speculation by Averill (n. p.) that Fernández might have registered the song *earlier* than 1941 but later had the date altered to 1941 in order to enjoy the greater copyright protection (eighty years) afforded to songs registered on or after that date.
3. I thank Michael Smith of Fall River for trying to clarify some of these complications for me. My own attempts to ascertain ownership of the various versions of the song, for purposes of transcription in this article, led me in circles. These latter involved Peer; Fall River; Hadem Music Corp., which claims (certain?) rights to the Fernández version; Universal Music, which handles some of Hadem's claims; and Hal Leonard, which is the print partner of Peer (which controls rights to the Espigúl version outside the United States) and of Hadem (as represented by Universal). Universal has rights to two versions of the Fernández arrangement: one by Carlos Delmonte and one by Benny Gebauer (neither of which corresponds to those presented in this article) (Jennifer Chartier of Hal Leonard Corp., personal communication).

Various factors inhibited the collection of data on the matter. Attorneys, for whom time is money, are not necessarily willing to share their thoughts and findings with academics, and scholars and others who are contracted by litigants may be constrained to represent a particular perspective, at least in public. The terms of

negotiated settlements, such as that involving SGAE and Fall River, are often confidential. Further, within Cuba various other considerations might also inhibit people from speaking openly on the subject, as Lapidus encountered in his own research there. "Guantanamera" is not a political song, but as an international entity involving negotiations between Havana and the capitalist world, it is deeply involved in political matters which many Cubans in Cuba would be obliged not to ignore.

4. Anthony Seeger, personal communication.
5. Aside from the sources cited below, much information was also provided to me by Darsi Fernandez Maceira, a representative for SGAE in Havana (personal communication, 2003).
6. See the website <http://club.telepolis.com/sondecuba/ESPANOL/GuantanameraES.htm> (accessed 3/06), published by Granma Internacional. Meanwhile, it was Pepecito Reyes (b. 1916), Fernández's pianist for seventeen years on the CMQ show, who created the instrumental introduction and accompanimental parts used in most familiar Cuban renditions of the song. While Reyes affirmed that Fernández composed and registered the melody, he expressed resentment that Fernández never acknowledged Reyes' role in shaping the familiar version of the song (in Cedeño, Michel, and Reyes Nuñez).
7. Equally problematic is Carpentier's other comment on the song and the *guajira*: "Sometimes, as occurred recently with 'La Guantanamera,' a *guajiro* singer appears to have invented a new melody. But let's not fall for it. It is simply a reappearance of a *romance*, whose singing was conserved in the interior of the island. Nor should we have any illusions about the celebrated Cubanness of the *guajira* melody. The melody of the Cuban *guajira* is identical to that of the Venezuelan *galerón*. [The only difference has to do with the number of verses used.]" (1946, 304).
With due respect to Carpentier's erudition, this statement is highly questionable. While some old *romances* have turned up in Cuba, Cuban musicologists do not seem to have traced any of the standard melodies of either the *punto* or the *guajira* to Spain, or to Venezuela (see, e.g., Linares 1999). The *galerón*, indeed, although often using *décimas* as texts, is quite distinct in style, melodies, and rhythm from any Cuban *punto* or *guajira* tradition. All translations from the Spanish in this article are by the author.
8. Even today, the term "paso de calle"—perhaps a corruption of *pasacalle* or *pasacallo*—denotes the guitar arpeggio punctuating verses of *changüí*, a creole genre of Guantánamo (see Lapidus 2005, 57).

The term "montuna" (not "montuno"), introduced by Galán, is very obscure, and I have never encountered it elsewhere as a musical designation (except as an adjective modifying a feminine noun, e.g., "música montuna" [mountain music].)

9. He writes, "The *montuna* abandons the city of Guantánamo and the people of Havana discover it in 1927—among the various *sones* that were being danced, and their trajectories appear to have proceeded in tandem—calling itself *guajira guantanamera*, indicating with that its cradle and using the melody that characterized it since 1930" (1983, 314). Thus, it is incorrect of Vizcaino (n.d.) to state that Galán traces the melody to the nineteenth century.
10. From *Los Guaracheros de Oriente: Son de la Loma* (Ansonia SALP 1565).
11. In that excerpt, Wilson sings the chorus once, then sings the first phrase a second time (with a slightly different tune) and then resumes speaking; the implication is clearly that the four-bar pattern is meant to be sung twice. Both the manuscript and the taped interview were provided to me by Benjamin Lapidus, to whom I am grateful.
12. I am grateful to María Teresa Linares for providing me with a copy of this recording.
13. Re-issued on *The Best of/Lo Mejor de Celio Gonzalez* (Fania LPA 8790) (1996).
14. From *Cuarteto y Sexteto Caney: Perfidia* (Tumbao Cuban Classics TCD-038). I am grateful to Lapidus for providing me with this recording.
15. The tradition of using the refrain as an independent entity thematically unrelated to the verses also renders it particularly adaptable to new settings and versions.
16. Typical, for example, is the duet rendition of the song in the second film in the *Routes of Rhythm* series (Eugene Rostow and Howard Dratch, Cultural Research and Communication, 1989).
17. Interview, 2003. Portillo de la Luz, contrary to Hernández-Reguant (2004, 15), insisted to me that Mexican sources continued to pay royalties during this period (at least to him), and that payments were even made from Peer International via subsidiaries. However, some of his assertions, such as his denial that Cuba ever renounced copyright, are at odds with data gathered by Moore, myself, and others.
18. For example a version of the song by Fernández and Benny Moré, recorded by Radio Progreso, praises the agrarian reform program. See the closing text remarks in the *Granma Internacional* website <http://club.telepolis.com/sondecuba/ESPANOL/GuantanameraES.htm> (accessed 3/06).

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